

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,	)	Application No. NUSF-1
on its own motion, seeking	)	
to establish guidelines for	)	PROGRESSION ORDER NO. 4
administration of the Nebraska	)	
Universal Service Fund.	)	Entered: February 8, 2000

BY THE COMMISSION:

1. On March 11, 1999, the Nebraska State Legislature passed Legislative Bill 514 (LB514) and it was subsequently signed into law by the Governor on March 18, 1999. Among other things, LB514 added section 75-609(3) to the Nebraska Revised Statutes. This section reads:

Reductions made to access charges pursuant to subsection (2) of this section shall be passed on to the customers of interexchange service carriers in Nebraska whose payment of charges have been reduced. The commission shall have the power and authority to ensure that any access charge reductions made pursuant to subsection (2) are passed on in a manner that is fair and reasonable. The commission shall have the power to review actions taken by any telephone carrier to ensure that this subsection is carried out.

2. By order dated January 13, 1999, in Application No. C-1628, the Commission found that access charges billed to interexchange service carriers (IXCs) in Nebraska by incumbent local exchange carriers (ILECs) should be reduced over a transitional period. A transitional period of three years was adopted for the non-rural ILECs, US West, Aliant dba ALLTEL, and GTE, and a transitional period of four years was adopted for the remaining, rural ILECs. Each ILEC was required to file a transition plan by March 31, 1999, that included an annual tariff filing to be made on or before July 1 of each year during the relevant transition period. Among other things, these tariff filings were to implement the access rates reductions as set forth in the January 13, 1999, Commission C-1628 order.

3. In Application No. C-1628/NUSF Progression Order #5, entered March 9, 1999, the Commission extended the effective date for the annual ILEC tariff filings from July 1 to September 1. This was done, in part, to allow IXCs adequate time to review the proposed access reductions contained in ILEC transition plans and to determine the amount of reductions in access charges that each IXC would realize.

4. In Application No. NUSF-1 Progression Order No. 1, entered April 20, 1999, the Commission found, pursuant to its authority under Nebraska Revised Statute 75-609(3), that interexchange carriers should pass through any reductions in access charges that are paid directly to Nebraska ILECs. In accordance with this requirement, the Commission required plans be filed demonstrating this pass-through on or before August 1, 1999.

5. Subsequent to that order, in Application No. NUSF-3 Progression Order No. 2, entered July 13, 1999, the Commission determined that access charges are a component of some services that facility-based IXCs sell to reselling IXCs. Accordingly, the Commission ordered that any reductions in access charges that are a component of services that facility-based IXCs resell to other IXCs should be passed on to the reselling IXCs. Reselling IXCs in turn are required to pass these reductions through to their customers. However, in light of the time requirement, the Commission declined, at that time, to adopt a time-frame for facility-based IXCs to pass reductions in access charges to reselling IXCs or for reselling IXCs to pass these reductions on to their customers. Concurrent with the release of this order, the Director of the NUSF sent a letter to all certified interexchange carriers setting forth a schedule for IXCs to demonstrate the amount of the reductions in access charges that have been passed-through to their intrastate toll customers.

#### O P I N I O N   A N D   F I N D I N G S

6. On September 15, 1997, the Commission, on its own motion, opened Docket No. C-1628 to, inter alia, determine if changes to the structure of intrastate access in Nebraska should be considered. Given the importance of the issues under consideration by the Commission in this matter, all LECs and IXCs that as of September 15, 1997, held certificates of convenience and necessity issued by this Commission were made parties to this proceeding and received notice of this docket. Following the last day for filing of petitions to intervene, the Commission entered, on October 29, 1997, an order setting a pre-hearing conference and requested comments on this matter. Comments were filed by eight parties on November 25, 1997. Reply comments were filed by nine parties on December 5, 1997. A pre-hearing conference was held on December 9, 1997, in the Commission Hearing Room in Lincoln, Nebraska. Based on the comments and the testimony provided at the pre-hearing conference, the Commission sought further comment on specific issues related to intrastate access charges in Nebraska. Comments were filed on or before March 6, 1998, by 22 parties and reply comments were filed on or before April 27, 1998, by 23 parties.

7. On May 22, 1998, a Petition was filed with Secretary of State seeking placement on the November ballot, for the purpose, inter alia, to require all implicit subsidies contained in access charges to be eliminated and to establish access charge rates that are based on forward-looking economic costs. This measure was ultimately placed on the November ballot and subsequently defeated by Nebraska voters. Further, on July 17<sup>th</sup>, 1998, the Federal Communications Commission entered an order effectively delaying the implementation of Federal universal service funding for non-rural LECs.

8. Due in part to the filing of the Access Petition and the FCC decision to delay Federal universal service fund for non-rural LECs, the Commission entered Progression Order No. 2 in Application

No. C-1628 on August 11, 1998. This order gave all interested parties the opportunity to amend or supplement the comments previously filed in this docket. Said order also set forth that the Commission would issue preliminary findings and conclusions in this matter by October 2, 1998, and would hold a hearing from October 27-30, 1998, upon such preliminary conclusions. The Commission entered an order, in Application No. C-1628, outlining its preliminary findings and conclusions on October 2, 1998. Hearings on these preliminary conclusions were held October 27 through October 29, 1998. Testimony was heard from all interested parties. Post-hearing briefs were then received on or before November 24, 1998. Based on the evidence received, the Commission entered its January 13, 1999, order in Application No. C-1628.

9. Section 75-609(2) allows the Commission on its own motion to review access charges, including rate levels. This section requires that the Commission, upon proper notice, hold and complete a hearing within 60 days. As discussed above, the Commission began seeking input related to the need for any potential access charge reforms on September 15, 1997. At this time, the purpose of the proceeding was to determine, as a threshold matter, should the Commission consider any changes to the existing access charge structures and rate levels in Nebraska. All affected parties received notice and the opportunity to provide input to the Commission. On October 2, 1998, the Commission, on its own motion, entered preliminary findings and conclusions in this matter. In its findings, the Commission concluded that substantial changes to the existing access charge system were warranted. Accordingly, the Commission held hearings October 27 through October 29, 1998 on these preliminary findings and conclusions. This hearing was held within 60 days of the Commission October 2, 1998 order.

10. The Commission has reviewed the findings contained in the order entered January 13, 1999, in Application No. C-1628 as it relates to access rate levels during the relevant ILEC transitional periods as well as the process that was used to develop these findings. Upon the conclusion of that review, the Commission is of the opinion and finds that the ordered access charge reductions are in compliance with and are re-affirmed under the Commission's authority contained in Neb. Rev. Stat. 75-609(2) (reissue of 1999).

11. As mentioned above, the requirement for IXCs to pass-through access change reductions is contained in Neb. Rev. Stat. 75-609(3). The first sentence of this paragraph states "Reductions made to access charges pursuant to subsection (2) of this section shall be passed on to the customers of interexchange service carriers in Nebraska whose payment of charges have been reduced." This sentence appears clear in its intent - access charge reductions shall be passed on. The Commission finds no equivocation or exceptions in this requirement. The second sentence of section 75-609(3) states "The commission shall have the power and authority to ensure that any access charge reductions made pursuant to subsection (2) are passed on in a manner that is **fair and reasonable** (emphasis added)." The language regarding "fair and reasonable" is not included in the first sentence that

requires the access reductions be passed on to an IXC's customers. Moreover, the fair and reasonable language is expressly linked to the manner in which access reductions are passed-through, not to the amount. Accordingly, the Commission interprets this to mean that access reductions should be passed on to different classes of IXC customers in a fair and reasonable manner. Therefore, the Commission is of the opinion and finds that any and all access reductions resulting from the Commission's C-1628 and NUSF orders must be passed through in their entirety by IXCs to their customers. The Commission will give latitude to IXCs regarding which toll services are lowered to pass-through the reduction in access charges. However, the Commission believes that customers paying IXC "basic schedule" rates should be a significant beneficiary of toll reductions. Typically, these customers lack either the expertise or the call volumes to benefit from the calling plans that have been previously introduced by IXCs.

12. In order to determine the overall amount of access charge reductions that IXCs received, the Commission performed the following analysis. First, based on the transition plans filed by the ILECs, the Commission calculated an overall reduction by multiplying the included 1998 demand by the relevant price change for each element and summing the result across rate elements and companies. Next, the Commission subtracted the amount of ILEC earnings above 12% that had been included in the pre-existing implicit support mechanisms of which access rates were the primary contributor. The amount of the intrastate toll reductions that ILECs made related to access reduction received from other ILECs were also subtracted. This results in an overall estimated access reduction attributable to IXCs of approximately \$32.5 million in terms of 1998 dollars.

13. The overall access reduction amount is apportioned among IXCs based on their reported 1998 intrastate revenue that would have been subject to the NUSF surcharge. In the event an IXC has failed to file its 1998 revenues with the Commission but is remitting to the NUSF, the October 1999 assessed revenue was annualized and used as a surrogate. The reason the Commission used assessable revenue to apportion the overall access reduction is that it is difficult and in many cases impossible for ILECs to separate the access reductions by IXC. However, the Commission believes that assessable revenue provides an accurate estimate of the access reduction received by each IXC. The Commission acknowledges that at this point its record regarding assessable revenues for IXCs may not be complete. However, the Commission has captured data from nearly all IXCs, including all IXCs with significant amount of intrastate revenues in Nebraska. Therefore, the Commission believes that any unidentified assessable revenues will have a de-minimis impact on this analysis.

14. Attachment A identifies those IXCs that the Commission believes pay intrastate access charges directly to Nebraska ILECs and received reductions related to the Commission's action under Section 75-609(2). These companies are hereby made party to this proceeding consistent with the Commission's findings in Application No. NUSF-1 Progression Order No. 1. Any of these companies that

have not filed an access pass-through plan with the Commission because of the assertion that they do not pay access charges directly to Nebraska ILECs must file an access pass-through plan by March 10, 2000. Any companies which fail to file a plan by such date shall be subject to show cause order as to why their certificate of public convenience to provide interexchange services within the State of Nebraska should not be revoked. In the event, the Commission identifies, at a later date, additional IXC's that pay access charges directly to Nebraska ILECs and received reductions related to the Commission's action under 75-609(2), the Commission reserves the right to add these IXC's to this proceeding upon proper notice.

15. In reviewing the filed access pass-through plans, the Commission has analyzed and considered two methods for IXC's to pass access reductions through to their customers. First, the Commission has looked at any intrastate toll rate reductions that IXC's have filed. These rate reductions were multiplied by 1998 demand to determine a toll reduction amount. The use of 1998 demand is necessary to compare the calculated toll reductions on a consistent basis with calculated access reductions which are stated in terms of 1998 dollars. Second, the Commission considered the migration of customers to lower rate plans that occurred since the Commission's January 13, 1999, C-1628 Order. This is done in recognition that the Commission's actions with respect to the lowering of access charges have enabled IXC's to introduce new lower cost plans in Nebraska and made existing plans viable in additional areas of the state. Again, amounts associated with customer migration was analyzed in terms of 1998 dollars.

16. Analyzing toll reduction and customer migration amounts in terms of 1998 dollars is necessary to ensure that adequate access reduction pass-through has occurred. In nearly all cases 1999 demand is greater than 1998 demand. As a result, comparing the dollar amount of toll reductions based on 1999 demand to the dollar amount of access reductions based on 1998 demand does not ensure that appropriate dollar amount is passed-through by IXC's to their customers. Higher demand levels result in greater dollar amounts, therefore if 1999 demand was used to calculate the access pass-through amount, the access reduction that IXC's must pass-through would be greater. Further, 1999 access demand is not yet available from the ILECs. Therefore the Commission is of the opinion and finds that toll reductions amount should be measured in terms of 1998 demand.

17. At this time, AT&T and Sprint Communications are the only companies that appear to have adequately passed-through the reductions in access charges, that they have received, to their customers. Accordingly, AT&T and Sprint Communications are removed from this docket.

18. The Commission believes the access pass-through plan filed by ALLTEL Systems, Inc. raises significant issues regarding the adequacy of the access reductions passed-through to their customers. Therefore, this company is directed to appear before this Commission at a formal hearing at a date to be determined.

The purpose of this hearing will be to determine if this company has complied with Neb. Rev. Stat. 75-609(3). If this company is found not to be in compliance, they shall be subject to a show cause order as to why their certificate of public convenience to provide interexchange services within the State of Nebraska should not be revoked.

19. All other companies listed on Attachment A are still parties to this proceeding. Their compliance with the access pass-through requirements in Neb. Rev. Stat. 75-609(3) is still under review by the Commission. Upon the completion of this review, these companies will either be removed from this docket, if found to be in compliance with the access pass-through requirements, or directed to appear before the Commission at a formal hearing to determine compliance with Neb. Rev. Stat. 75-609(3). If these companies are found not to be in compliance, they shall be subject to a show cause order why as to their certificate of public convenience to provide interexchange services within the State of Nebraska should not be revoked.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that AT&T and Sprint Communications be, and they are hereby, removed from this proceeding.

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that ALLTEL Systems, Inc. is hereby ordered to appear before the Commission at a date and time to be determined, to demonstrate their compliance with Neb. Rev. Stat. 75-609(3).

MADE AND ENTERED at Lincoln, Nebraska, this 8<sup>th</sup> day of February, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION:

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

Attachment A

ALLTEL Systems fka Aliant Systems, Inc.  
AmeriVision Communications, Inc.  
AT&T  
Cable & Wireless USA, Inc.  
Communication Telesystems International  
d/b/a Worldxchange Communications  
d/b/a CTS Telcom  
CommuniGroup of K.C., Inc.

Dakota Cooperative Telecommunications  
d/b/a DTG Communications  
BroadWing Communications Services, Inc.  
d/b/a Eclipse Telecommunications, Inc.  
d/b/a National Teleservice, Inc.  
d/b/a NTI  
Long Distance Wholesale Club  
Telco Holdings, Inc.  
Feist Long Distance  
FirstTel, Inc.  
Frontier Communications International, Inc.  
Iowa Network Services, Inc  
Maxxis Communications, Inc.  
MCI WorldCom Communications, Inc.  
MCLEODUSA Telecommunications Services, Inc.  
Consolidated Communications Telecom Services, Inc.  
NET-tel Corporation  
Operator Communications, Inc.  
d/b/a Oncor Communications, Inc.

One Call Communications, Inc.  
d/b/a Opticom  
OneStar Long Distance, Inc.  
Qwest Communications Corp.  
LCI International Telecom Corporation  
d/b/a QWEST Communications Corporation aka QNC  
RSL COM U.S.A., Inc.  
d/b/a CBS Corporation dba Westinghouse Communications  
TotalTel, Inc.  
Touch 1 Communications, Inc.  
Sprint Communications Company, L.P.  
USA Paging, Inc.  
d/b/a Cable USA Long Distance  
VarTec Telecom, Inc.  
d/b/a Clear Choice Communications  
U. S. Republic Communications, Inc.  
Telephone Express

This document was created with Win2PDF available at <http://www.daneprairie.com>.  
The unregistered version of Win2PDF is for evaluation or non-commercial use only.